

**ORDINANCE NO. 20**

**AN ORDINANCE OF THE  
BETHEL ISLAND MUNICIPAL IMPROVEMENT DISTRICT  
ESTABLISHING A PROCEDURE FOR THE  
ABATEMENT OF NUISANCES**

Be it ordained by the Board of Directors of the Bethel Island Municipal Improvement District, as follows:

**CHAPTER 20.01. DEFINITIONS.**

**Section 20.01.010. Use of Definitions; Incorporation of Definitions.**

In order to provide for the efficient use of this Ordinance, certain terms shall be defined, as hereinafter specified in this chapter. The definitions within this chapter shall be deemed to have been incorporated into each chapter within this Ordinance.

**Section 20.01.020. Plural Form of Defined Term.**

In this Ordinance, the singular form of a defined term shall include the plural form of that term, unless the context clearly indicates that the plural form is excluded.

**Section 20.01.030. Capitalization of Defined Term.**

In this Ordinance: (a) a defined term may, but is not required to, appear in all capital letters; and (b) the plural form of a defined term may, but is not required to, appear in all capital letters.

**Section 20.01.040. Definition of "ADMINISTRATIVE ASSISTANT."**

As used in this Ordinance, the term "ADMINISTRATIVE ASSISTANT" shall mean the Administrative Assistant of the Bethel Island Municipal Improvement District.

**Section 20.01.050. Definition of "BIMID."**

As used in this Ordinance, the term "BIMID" shall mean the Bethel Island Municipal Improvement District.

**Section 20.01.060. Definition of "BIMID ACT."**

As used in this Ordinance, the term "BIMID ACT" shall mean the Bethel Island Municipal Improvement District Act, Chapter 22 of the Statutes of 1960, First Extraordinary Session.

**Section 20.01.070. [Reserved.]**

**Section 20.01.080. Definition of "BOARD" and "BOARD OF DIRECTORS."**

As used in this Ordinance, the term "BOARD" and the term "BOARD OF DIRECTORS" shall mean to the Board of Directors of the Bethel Island Municipal Improvement District.

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**Section 20.01.090. [Reserved.]**

**Section 20.01.100. Definition of “BOARD SECRETARY.”**

As used in this Ordinance, the term “BOARD SECRETARY” shall mean the member of the BOARD OF DIRECTORS who has been elected as the Secretary of the Bethel Island Municipal Improvement District.

**Section 20.01.110. Definition of “BOAT.”**

As used in this Ordinance, the term “BOAT” shall mean any vessel for transport by water regardless of size, use, construction, or method of propulsion.

**Section 20.01.115. Definition of “BOW AND ARROW.”**

As used in this Ordinance, the term “BOW AND ARROW” shall mean any bow and arrow combination, including a crossbow and arrow, excluding bow and arrow combinations considered as toys and intended to release arrows incapable of penetrating a target or other surface.

**Section 20.01.120. Definition of “CAMPING.”**

As used in this Ordinance, the term “CAMPING” shall mean to establish or pitch, or attempt to establish or pitch, a camp, tent, or temporary shelter or to reside temporarily or otherwise in any camp, tent or temporary shelter.

**Section 20.01.130. [Reserved.]**

**Section 20.01.140. Definition of “COUNTY.”**

As used in this Ordinance, the term “COUNTY” shall mean Contra Costa County within the State of California.

**Section 20.01.150. Definition of “CULVERT.”**

As used in this Ordinance, the term “CULVERT” shall mean a pipe, covered gutter or other covered conduit through which DRAINAGE WATER flows and/or is likely to flow in the future.

**Section 20.01.160. Definition of “DEFAULT DESIGN LEVEE.”**

As used in this Ordinance, the term “DEFAULT DESIGN LEVEE” shall mean the default design for the width and height of the LEVEE, which, to the extent not met or exceeded, and absent any site-specific data, the DISTRICT intends to achieve or exceed through reconstruction, rehabilitation or maintenance of the existing LEVEE. Various DEFAULT DESIGN LEVEES are specifically set forth in Chapter 9.04 and Chapter 9.05 of Ordinance 9.

**Section 20.01.170. Definition of “DESIGNATED LEVEE PARKING AREA.”**

As used in this Ordinance, the term “DESIGNATED LEVEE PARKING AREA” shall mean that area of the LEVEE which the DISTRICT has designated for the parking of MOTOR VEHICLES and/or TRAILERS.

**Section 20.01.180. [Reserved.]**

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**Section 20.01.190. Definition of “DISTRICT.”**

As used in this Ordinance, the term “DISTRICT” shall mean the Bethel Island Municipal Improvement District.

**Section 20.01.200. “DISTRICT ABATEMENT OFFICER.”**

As used in this Ordinance, the term “DISTRICT ABATEMENT OFFICER” shall mean the PERSON appointed or acting as the “District Abatement Officer” pursuant to Section 20.03.070 of this Ordinance.

**Section 20.01.210. Definition of “DISTRICT APPROVAL.”**

As used in this Ordinance, the term “DISTRICT APPROVAL” shall mean any written document from the DISTRICT which grants to the applicant the DISTRICT’s permission to perform an act within the DISTRICT, or otherwise allows the applicant to perform an act within the DISTRICT. The term “DISTRICT APPROVAL” shall also include a written document from the DISTRICT which approves a plan, even if another governmental agency must issue a permit or otherwise approve that plan before acts can be undertaken pursuant to that plan.

**Section 20.01.220. Definition of “DISTRICT MAINTAINED DITCH.”**

As used in this Ordinance, the term “DISTRICT MAINTAINED DITCH” shall mean a DITCH that contributes to the overall drainage of the ISLAND, the maintenance of which is the responsibility of the DISTRICT.

**Section 20.01.230. Definition of “DISTRICT MANAGER.”**

As used in this Ordinance, the term “DISTRICT MANAGER” shall mean the District Manager of the Bethel Island Municipal Improvement District.

**Section 20.01.240. [Reserved.]**

**Section 20.01.250. [Reserved.]**

**Section 20.01.260. Definition of “DITCH.”**

As used in this Ordinance, the term "DITCH" shall mean a trench dug in the earth, within the DISTRICT, in which DRAINAGE WATER is collected and/or transported for eventual pumping from the ISLAND. The term “DITCH” includes a canal.

**Section 20.01.270. Definition of “DITCH MAINTENANCE SETBACK .”**

As used in this Ordinance, the term "DITCH MAINTENANCE SETBACK" shall mean a strip of land on the side of a DITCH, to be made available for use when maintaining the DITCH.

**Section 20.01.280. Definition of “DOCK.”**

As used in this Ordinance, the term "DOCK" shall include all of the following: (a) a dock, pier, or wharf constructed partially or wholly over a waterway; and (b) a piling or pilings placed in a waterway.

**Section 20.01.290. [Reserved.]**

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**Section 20.01.300. Definition of “DRAINAGE WATER.”**

As used in this Ordinance, the term "DRAINAGE WATER" shall include seepage, ground water, storm water, irrigation return flow, and water from any other source contributing to the drainage of the ISLAND.

**Section 20.01.310. [Reserved.]**

**Section 20.01.320. Definition of “FIREARM.”**

As used in this Ordinance, the term “FIREARM” shall mean any handgun, shotgun or rifle (including but not limited to air guns, air rifles, gas guns and gas rifles), excluding toys that do not expel a projectile capable of penetrating a target or other surface.

**Section 20.01.330. Definition of “FISHING.”**

As used in this Ordinance, the term “FISHING” shall mean the catching or attempting to catch fish, shellfish, or other aquatic animals by use of a pole, line, net, or other device or implement.

**Section 20.01.340. Definition of “FIXTURE.”**

As used in this Ordinance, the term “FIXTURE” shall mean anything built or constructed, (except GRADING and STRUCTURES), including but not limited to a landing, gang plank (other than from a DOCK), ramp (other than from a DOCK), walkway (other than from a DOCK), a wooden stairway constructed on the slope of the LEVEE for the purpose of gaining access to the LEVEE CROWN, gate, fence, barricade, swimming pool, hot tub, bulkhead, wall (including retaining wall), pipeline, conduit, vault, post and pole.

**Section 20.01.350. Definition of “GRADING.”**

As used in this Ordinance, the term “GRADING” shall mean the alteration of the surface of the land by the addition and/or removal of soil, sand, rock and/or peat, even if such materials come from, or are removed to, another location on the same PARCEL OF LAND. “GRADING” includes excavating, filling, stockpiling, terracing, road building, leveling and/or bulldozing on any PARCEL OF LAND.

**Section 20.01.360. Definition of “GROUP MAINTAINED DITCH.”**

As used in this Ordinance, the term “GROUP MAINTAINED DITCH” shall mean a DITCH, the maintenance of which is the joint responsibility of two or more owners of separate parcels of real property by virtue of an agreement entered into by such owners or their predecessors in interest.

**Section 20.01.370. [Reserved.]**

**Section 20.01.380. [Reserved.]**

**Section 20.01.390. Definition of “ISLAND.”**

As used in this Ordinance, the term "ISLAND" shall mean that certain land mass, surrounded by water, known as “Bethel Island” in Contra Costa County, California.

**Section 20.01.400. Definition of “LANDSIDE TOE.”**

(A) As used in this Ordinance, the term “LANDSIDE TOE,” when used in the context of an existing LEVEE, shall mean the point at which the landside sloped side of the existing LEVEE intersects the existing land surface of the ISLAND.

(B) As used in this Ordinance, the term “LANDSIDE TOE,” when used in the context of the DEFAULT DESIGN LEVEE, shall mean the point at which the landside sloped side of the DEFAULT DESIGN LEVEE intersects: (i) the existing land surface of the ISLAND; or (ii) in the case of an OVERSIZED LEVEE, the existing land surface of the ISLAND projected horizontally toward the water.

**Section 20.01.410. [Reserved.]**

**Section 20.01.420. Definition of “LEGAL NONCONFORMING OBJECT.”**

As used in this Ordinance, the term “LEGAL NONCONFORMING OBJECT” means any object, TREE, STRUCTURE, or other thing which meets all of the following criteria:

- (a) it is in violation of Chapter 9.07 of Ordinance 9 (entitled “NON-VEHICULAR ACTIVITIES AND OBJECTS IN LEVEE SETBACK AREA”); and
- (b) it had all required approvals from the DISTRICT and permits from the COUNTY at the time it was constructed or placed, wholly or partially, within the LEVEE SETBACK AREA.

If the approvals and permits referred to in subsection (b) above, were obtained, the term “LEGAL NONCONFORMING OBJECTS” may include, but are not limited to, objects, TREES, STRUCTURES, FIXTURES, and other things that have been built or placed into the slope of the LEVEE (these have heretofore been termed “encroachments” and “nonconforming encroachments” in various reports on the LEVEE).

**Section 20.01.430. Definition of “LEVEE.”**

As used in this Ordinance, the term “LEVEE” shall mean the entirety of the embankment which surrounds the ISLAND and restrains the waters of the San Joaquin-Sacramento River Delta, including, but not limited to, Piper Slough, Taylor Slough, Sand Mound Slough, Dutch Slough, and Big and Little Frank's Tracts; such embankment extends from the LANDSIDE TOE of the LEVEE to the WATERSIDE TOE of the LEVEE.

**Section 20.01.440. Definition of “LEVEE CROWN.”**

As used in this Ordinance, the term “LEVEE CROWN” shall mean the entirety of the flat, or nearly flat, area at the top of the LEVEE, which lies between the descending sloped embankment on the waterside of the LEVEE, and the descending sloped embankment on the landside of the LEVEE.

**Section 20.01.445. Definition of “LEVEE IMPACT ZONE.”**

As used in this Ordinance, the term “LEVEE IMPACT ZONE” shall mean a strip of land two hundred and sixty (260) feet wide, lying one hundred and thirty (130) feet on each side of, and measured perpendicular to, the centerline of the existing LEVEE CROWN.

**Section 20.01.450. [Reserved.]**

**Section 20.01.460. [Reserved.]**

**Section 20.01.470. Definition of “LEVEE SETBACK AREA.”**

As used in this Ordinance, the term “LEVEE SETBACK AREA” shall mean an area, parallel with the centerline of the LEVEE, consisting of the combined width of the waterside levee

setback (as set in Chapter 9.06 of Ordinance 9) and the landside levee setback (as set in Chapter 9.06 of Ordinance 9).

**Section 20.01.480. Definition of “LIVESTOCK.”**

As used in this Ordinance, the term “LIVESTOCK” shall mean any horses, cattle, sheep, goats, pigs, or other useful animal or animals, excepting household pets, of a type kept or raised on a farm or ranch.

**Section 20.01.490. [Reserved.]**

**Section 20.01.500. [Reserved.]**

**Section 20.01.510. Definition of “MOTOR VEHICLE.”**

As used in this Ordinance, the term “MOTOR VEHICLE” shall mean all of the following:

- (a) a vehicle that is self-propelled by means of a motor of any type, except a self-propelled wheelchair, motorized tricycle, or motorized quadri-cycle, when operated by a PERSON who, by reason of physical disability, is otherwise unable to move about as a pedestrian; and
- (b) a vehicle capable of being propelled by both human power and one or more motors, such as a motorized bicycle, moped or motorized scooter.

**Section 20.01.520. [Reserved.]**

**Section 20.01.530. [Reserved.]**

**Section 20.01.540. [Reserved.]**

**Section 20.01.550. [Reserved.]**

**Section 20.01.560. Definition of “OWNER.”**

(A) As used in this Ordinance, the term "OWNER," when used in the context of a PARCEL OF LAND or other real property interest, shall mean the owner or owners of record of real property. If the ownership of land, rather than a lesser interest (such as an easement), is in issue, it shall mean the owner or owners of record as shown on the latest equalized assessment role of Contra Costa County, or as otherwise known to the DISTRICT by more recent and reliable information. Such term includes a part owner, a joint owner, a tenant in common and a joint tenant.

(B) As used in this Ordinance, the term “OWNER,” when used in the context other than real property, shall mean the owner or owners, or reputed owner or owners, of personal property. Such term includes a part owner, a joint owner, a tenant in common and a joint tenant.

**Section 20.01.570. [Reserved.]**

**Section 20.01.580. Definition of “PARCEL OF LAND.”**

As used in this Ordinance, the term “PARCEL OF LAND” shall mean a lot, parcel or other division of land as shown as a separate parcel on the most recent editions of the Contra Costa County Assessor’s maps.

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**Section 20.01.590. Definition of “PERSON.”**

(A) Except as provided in subsection (B) of this Section, as used in this Ordinance, the term “PERSON” shall mean any individual, company, firm, partnership, limited liability company, joint venture, association, corporation, governmental body or other legal entity.

(B) Notwithstanding subsection (A) of this Section, if the context where the term “PERSON” is used indicates that it is referring to a natural person, the term “PERSON” shall mean an individual.

**Section 20.01.600. [Reserved.]**

**Section 20.01.610. [Reserved.]**

**Section 20.01.620. [Reserved.]**

**Section 20.01.630. Definition of “PROPERTY OWNER MAINTAINED DITCH.”**

As used in this Ordinance, the term “PROPERTY OWNER MAINTAINED DITCH” shall mean a DITCH that contributes to the overall drainage of the ISLAND, the maintenance of which is the responsibility of a specific OWNER of a PARCEL OF LAND, and not the responsibility of the DISTRICT.

**Section 20.01.640. Definition of “RESTRICTED PORTION.”**

As used in this Ordinance, the term “RESTRICTED PORTION,” when used in the context of a LEVEE, shall mean that area of the LEVEE declared, from time to time, to be a “restricted portion” by resolution or other action of the BOARD OF DIRECTORS.

**Section 20.01.650. [Reserved.]**

**Section 20.01.660. [Reserved.]**

**Section 20.01.670. [Reserved.]**

**Section 20.01.680. [Reserved.]**

**Section 20.01.690. [Reserved.]**

**Section 20.01.700. [Reserved.]**

**Section 20.01.710. Definition of “STRUCTURE.”**

As used in this Ordinance, the term “STRUCTURE” shall mean any building or part thereof, including but not limited to a dwelling, mobile home, apartment building, office building, commercial building, meeting hall, warehouse, garage, shed, lean-to, deck, DOCK, gang plank attached to a DOCK, ramp attached to a DOCK, and walkway attached to a DOCK.

**Section 20.01.720. Definition of “TRAILER.”**

As used in this Ordinance, the term “TRAILER” shall mean a vehicle having its own structure, designed for carrying PERSONS or property, and designed for being drawn by a MOTOR VEHICLE.

**Section 20.01.730. [Reserved.]**

**Section 20.01.740. Definition of “TREE.”**

As used in this Ordinance, the term “TREE” shall mean any vegetation with a trunk diameter greater than four inches, measured 30” high off the ground.

**Section 20.01.750. [Reserved.]**

**Section 20.01.770. [Reserved.]**

**Section 20.01.780. [Reserved.]**

**Section 20.01.790. Definition of “WATERSIDE TOE.”**

(A) As used in this Ordinance, the term “WATERSIDE TOE,” when used in the context of an existing LEVEE, shall mean the point at which the waterside sloped side of the existing LEVEE intersects the bottom of the waterway outside the ISLAND.

(B) As used in this Ordinance, the term “WATERSIDE TOE,” when used in the context of the DEFAULT DESIGN LEVEE, shall mean the point at which the waterside sloped side of the DEFAULT DESIGN LEVEE intersects: (i) the bottom of the waterway outside the ISLAND; or (ii) in the case of an OVERSIZED LEVEE, the bottom of the waterway outside the ISLAND projected horizontally toward the interior of the ISLAND.

**Section 20.01.800. “Waterside,” “Landside” and “Island Side.”**

(A) As used in this Ordinance, when the term “waterside” is used with reference to a LEVEE, it means the side of the LEVEE facing toward the water surrounding the ISLAND. As used in this Ordinance, when the term “waterside” is used with reference to an edge of the LEVEE CROWN, it means the edge of the LEVEE CROWN closest to the water surrounding the ISLAND. As used in this Ordinance, when the term “waterside” is used with reference to an artificial line (other than the edge of the LEVEE CROWN ) it means the area from such line toward, or further out into, the water surrounding the ISLAND and in a direction away from the interior of the ISLAND.

(B) As used in this Ordinance, when the term “landside” is used with reference to a LEVEE, it means the side of the LEVEE generally facing toward the center of the ISLAND. As used in this Ordinance, when the term “landside” is used with reference to an edge of the LEVEE CROWN, it means the edge of the LEVEE CROWN farthest away from the water surrounding the ISLAND. As used in this Ordinance, when the term “landside” is used with reference to an artificial line (other than the edge of the LEVEE CROWN ) it means the area from such line toward the interior of the ISLAND and in a direction away from the water surrounding the ISLAND.

(C) As used in this Ordinance, the term “landside” is synonymous with the term “island side.”



## **CHAPTER 20.02. INTERPRETATION & SEVERABILITY.**

### **Section 20.02.010. Interpretation as Restatements.**

The provisions of this Ordinance, insofar as they are substantially the same as existing ordinances or regulations of the DISTRICT relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

### **Section 20.02.020. Designation of Chapters and Sections.**

The designations or names given to the various chapters, sections and subsections within this Ordinance are declared to be mere abbreviations and/or summaries of some of the primary subjects contained therein, are not intended to be full and complete summaries of the contents contained therein, and shall not be used when interpreting the meaning of any such chapter, section and/or subsection.

### **Section 20.02.030. Use of the Words “shall” and “may.”**

(A) Except as provided in subsection (B) of this section, as used in this Ordinance, the term "shall" indicates a mandatory direction, while the term "may" indicates a permissive, but not mandatory, grant of authority.

(B) The use of the word “shall” in a provision of this Ordinance is not intended to impose upon the DISTRICT, its officers, employees or agents, a mandatory duty of care toward a PERSON or property so as to provide a basis of civil liability for damages.

### **Section 20.02.040. No Provision to Impose Greater Liability than Statute.**

No provision of this Ordinance shall be interpreted to impose upon the DISTRICT, its officers, employees or agents, any greater liability than that required by statute of the State of California.

### **Section 20.02.050. Use of Tenses.**

As used in this Ordinance, the present tense includes the past and future tenses, and the future tense includes the present tense, unless the context clearly indicates a contrary intent.

### **Section 20.02.060. Use of Gender.**

As used in this Ordinance, a reference to either the masculine, feminine or neuter gender shall include the other genders.

### **Section 20.02.070. Territorial Limits.**

This Ordinance shall only apply within the territorial limits of the DISTRICT, as such territorial limits may exist at any given time.

### **Section 20.02.080. Conflict among Provisions within Ordinance.**

If there is any conflict between the provisions of one or more sections of this Ordinance, the stricter provision shall control.

### **Section 20.02.090. Severability.**

If any section, subsection, paragraph, sentence, clause or phrase within this Ordinance is for any reason held to be unconstitutional or invalid, such holding shall not affect the validity of the remaining portions of this Ordinance. The BOARD hereby declares that it would have enacted

this Ordinance and every section, subsection, paragraph, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases be unconstitutional or invalid.

**Section 20.02.100. Ordinance to Constitute Regulation.**

The provisions of this Ordinance shall constitute a regulation of the DISTRICT governing the supplying of storm water and reclamation service.

## **CHAPTER 20.03. TYPES OF NUISANCES; FINDINGS.**

### **Section 20.03.010. General Findings Regarding Ditches.**

The BOARD OF DIRECTORS finds and declares as follows:

- (a) The ISLAND is below the level of the surrounding water in Sand Mound Slough, Dutch Slough, Taylor Slough, and Piper Slough.
- (b) The ISLAND is de-watered through works of reclamation, including but not limited to levees surrounding the island, drainage DITCHes within the interior of the ISLAND, and pumps.
- (c) The drainage DITCHes receive storm water and water that seeps through and under the LEVEE, and are part of a system which conveys such waters to points where they are pumped from the ISLAND.
- (d) When the drainage DITCHes become obstructed, or partially obstructed, with vegetation, silt, debris, refuse or other matter, they do not function properly, which can cause localized flooding and/or the erosion of adjacent earth.
- (e) When the drainage DITCHes become misaligned due to human caused changes, they often do not function properly, which can cause localized flooding and/or the erosion of adjacent earth.
- (f) When the drainage DITCHes lose their ability to properly carry water in the intended direction, or carry water in the intended direction at all, due to natural subsidence of the ISLAND, they do not function properly, which can cause localized flooding and/or the erosion of adjacent earth.
- (g) The drainage DITCHes should be maintained so that they are free from vegetation, silt, refuse and other matter which could interrupt the flow of water in such DITCHes.
- (h) It is in the public interest to declare the circumstances under which a drainage ditch becomes a public nuisance; to establish penalties for maintenance of such a nuisance; and to establish a summary abatement procedure for abating such a nuisance, the cost of which abatement procedure may be made both a special assessment against the PARCEL OF LAND upon which the nuisance was maintained and a personal obligation of the OWNER of such PARCEL OF LAND or other PERSON maintaining the nuisance.

### **Section 20.03.020. What Constitutes a Public Nuisance Regarding Ditches.**

(A) The BOARD OF DIRECTORS hereby declares that a PROPERTY OWNER MAINTAINED DITCH constitutes a public nuisance when it is not maintained in such a way so as to keep it free from vegetation, silt, debris, refuse and other matter which could interrupt the flow of water in such PROPERTY OWNER MAINTAINED DITCH.

(B) The BOARD OF DIRECTORS hereby declares that a PROPERTY OWNER MAINTAINED DITCH constitutes a public nuisance when it is not maintained to a minimum depth, minimum width and/or required cross-sectional shape, as specified by the DISTRICT.

(C) The BOARD OF DIRECTORS hereby declares that a PROPERTY OWNER MAINTAINED DITCH constitutes a public nuisance when, through lack of maintenance or

natural subsidence, it no longer flows in a direction toward a DISTRICT MAINTAINED DITCH.

(D) The BOARD OF DIRECTORS hereby declares that a CULVERT within a PROPERTY OWNER MAINTAINED DITCH constitutes a public nuisance when it is not maintained in such a way so as to keep it free from vegetation, silt, debris, refuse and other matter which could interrupt the flow of water in such CULVERT.

(E) The BOARD OF DIRECTORS hereby declares that a GROUP MAINTAINED DITCH constitutes a public nuisance when it is not maintained in such a way so as to keep it free from vegetation, silt, debris, refuse and other matter which could interrupt the flow of water in such GROUP MAINTAINED DITCH.

(F) The BOARD OF DIRECTORS hereby declares that a GROUP MAINTAINED DITCH constitutes a public nuisance when it is not maintained to a minimum depth, minimum width and/or required cross-sectional shape, as specified by the DISTRICT.

(G) The BOARD OF DIRECTORS hereby declares that a GROUP MAINTAINED DITCH constitutes a public nuisance when, through lack of maintenance or natural subsidence, it no longer flows in a direction toward a DISTRICT MAINTAINED DITCH.

(H) The BOARD OF DIRECTORS hereby declares that a CULVERT within a GROUP MAINTAINED DITCH constitutes a public nuisance when it is not maintained in such a way so as to keep it free from vegetation, silt, debris, refuse and other matter which could interrupt the flow of water in such CULVERT.

(I) The BOARD OF DIRECTORS hereby declares that a PARCEL OF LAND constitutes a public nuisance when the OWNER of such PARCEL OF LAND, after fourteen (14) days' written notice from the DISTRICT (served by both first class and certified mail), fails to remove any object from a DITCH MAINTENANCE SETBACK within such PARCEL OF LAND, which prevents or impedes the passage of the DISTRICT's equipment through and along such DITCH MAINTENANCE SETBACK, (except fences and asphalt, concrete and similar surfaces, to the extent they may remain in the DITCH MAINTENANCE SETBACK pursuant to Section 4.07.050 of Ordinance 4, entitled "Objects in Ditch Maintenance Setbacks; Removing Upon Notice; Risk of Loss").

(J) The BOARD OF DIRECTORS hereby declares that a PARCEL OF LAND constitutes a public nuisance when any PROPERTY OWNER MAINTAINED DITCH, GROUP MAINTAINED DITCH or DISTRICT MAINTAINED DITCH, upon such PARCEL OF LAND, has been realigned and/or filled-in without a DISTRICT APPROVAL having been issued allowing such realignment or filling.

### **Section 20.03.030. What Constitutes a Public Nuisance Regarding Levees.**

(A) The BOARD OF DIRECTORS hereby declares that FISHING on, over or from the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(B) The BOARD OF DIRECTORS hereby declares that hunting on, over or from the LEVEE and/or within the LEVEE SETBACK AREA constitutes a public nuisance.

(C) The BOARD OF DIRECTORS hereby declares that discharging any FIREARM or BOW AND ARROW on, over or from the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(D) The BOARD OF DIRECTORS hereby declares that brandishing any FIREARM or BOW AND ARROW on, over or from the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance, (for the purposes of this subsection, the term "brandishing" shall mean: (i) to shake or wave menacingly; or (ii) to exhibit in an ostentatious or aggressive manner).

(E) The BOARD OF DIRECTORS hereby declares that CAMPING on or over the LEVEE and/or within the LEVEE SETBACK AREA constitutes a public nuisance.

(F) The BOARD OF DIRECTORS hereby declares that launching any BOAT on, over or from the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(G) The BOARD OF DIRECTORS hereby declares that leaving, placing, maintaining, riding, driving or controlling LIVESTOCK on or over the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(H) The BOARD OF DIRECTORS hereby declares that removing rocks, rip-rap, sheet-pile, bulkheads, wave-walls, or other wave-wash protection devices from the LEVEE, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(I) The BOARD OF DIRECTORS hereby declares that digging into the LEVEE (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(J) The BOARD OF DIRECTORS hereby declares that GRADING, excavating, leveling, filling, widening, raising and/or cutting of the material of which the LEVEE is made (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(K) The BOARD OF DIRECTORS hereby declares that GRADING, excavating, leveling, filling, cutting and/or digging within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(L) The BOARD OF DIRECTORS hereby declares that the demolition of one or more STRUCTURES on the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(M) The BOARD OF DIRECTORS hereby declares that any work of any kind which obstructs or interferes, or may obstruct or interfere, with the ability of the DISTRICT or its agents or employees to conveniently monitor, inspect, maintain or repair the LEVEE, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(N) The BOARD OF DIRECTORS hereby declares that the construction, erection, leaving, storing or maintaining of any STRUCTURE or FIXTURE on or over the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(O) The BOARD OF DIRECTORS hereby declares that launching, leaving, placing, storing or maintaining any explosive device, firework or pyrotechnic emergency signal device on the LEVEE, and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(P) The BOARD OF DIRECTORS hereby declares that building, setting or maintaining any fire, bonfire or campfire on the LEVEE, and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(Q) The BOARD OF DIRECTORS hereby declares that leaving, placing, storing or maintaining any of the following, on or over the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance: (a) A podium; (b) A bandstand; (c) Bleachers; (d) A mobile home; (b) A shed; (c) A pole carport; (d) A portable toilet; (e) A portable office; and (f) Any movable STRUCTURE not included within (a) through (e), inclusive, of this subsection.

(R) The BOARD OF DIRECTORS hereby declares that leaving, placing, storing or maintaining any of the following on or over the LEVEE, and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance:

- (a) Any lumber, pipeline (including pipes, conduits, hoses and other devices for the transport of air or liquids), pole, pole line, cable, gate barrier, barricade, conduit, rail, DOCK, ramp, gang plank or landing;
- (b) Any recreational item normally associated with a rear yard of a home, (including but not limited to a trampoline, sports equipment, picnic table, article of outdoor furniture, swing set or wading pool);
- (c) Any barbeque, smoker, cooking grill and outdoor stove (including any fire or flame therein);
- (d) Any movable object or thing of any kind (other than a STRUCTURE, MOTOR VEHICLE or a TRAILER) which obstructs or interferes, or may obstruct or interfere, with the ability of the DISTRICT or its agents or employees to conveniently monitor, inspect, maintain or repair the LEVEE; and/or
- (e) Any movable item or object (other than a STRUCTURE, MOTOR VEHICLE or a TRAILER) which obstructs traffic on the LEVEE CROWN.

(S) The BOARD OF DIRECTORS hereby declares that the construction, erection, placement, and/or maintenance of any fence on the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(T) The BOARD OF DIRECTORS hereby declares that the construction and/or maintenance of any deck, with or without supporting posts, on the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(U) The BOARD OF DIRECTORS hereby declares that the construction and/or maintenance of any retaining wall, with or without back-fill, on the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(V) The BOARD OF DIRECTORS hereby declares that the construction, erection, placement, or maintenance of any DOCK, in whole or in part, on the LEVEE and/or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance. For the purposes of this subsection, a gang plank or walkway from the DOCK to the LEVEE, shall not be considered part of such DOCK.

(W) The BOARD OF DIRECTORS hereby declares that the construction, erection, placement, or maintenance of any gang plank or walkway, from a DOCK to the LEVEE, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(X) The BOARD OF DIRECTORS hereby declares that planting, maintaining, growing or allowing to grow grass on the LEVEE CROWN, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(Y) The BOARD OF DIRECTORS hereby declares that planting, maintaining, growing or allowing to grow any plant on or over the LEVEE and/or within the LEVEE SETBACK AREA, which is not expressly allowed in the DISTRICT's Ordinance 9, constitutes a public nuisance.

(Z) The BOARD OF DIRECTORS hereby declares that the expansion of a LEGAL NONCONFORMING OBJECT, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(AA) The BOARD OF DIRECTORS hereby declares that the extension of the useful life, by any repair (other than a repair to keep a dwelling habitable) of a LEGAL NONCONFORMING OBJECT, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(BB) The BOARD OF DIRECTORS hereby declares that the repair or reconstruction of a LEGAL NONCONFORMING OBJECT after it has been damaged or destroyed in excess of twenty-five percent (25%) of the value of the LEGAL NONCONFORMING OBJECT, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance. If the LEGAL NONCONFORMING OBJECT has been damaged or destroyed, as used in this subsection the phrase "value of the LEGAL NONCONFORMING OBJECT" shall refer to the cost to rebuild the LEGAL NONCONFORMING OBJECT (based upon prevailing construction costs) immediately before the damage or destruction occurred, less a reasonable amount of money to compensate for any deterioration and deferred maintenance suffered by the LEGAL NONCONFORMING OBJECT at that time. If the LEGAL NONCONFORMING OBJECT is in need a repair in order to keep it habitable, as used in this subsection the phrase "value of the LEGAL NONCONFORMING OBJECT" shall refer to the cost to rebuild the LEGAL NONCONFORMING OBJECT (based upon prevailing construction costs) immediately before the repair to keep it habitable became necessary, less a reasonable amount of money to compensate for any deterioration and deferred maintenance suffered by the LEGAL NONCONFORMING OBJECT at that time.

(CC) The BOARD OF DIRECTORS hereby declares that any construction activities within the LEVEE IMPACT ZONE constitutes a public nuisance when such activities are undertaken without a DISTRICT APPROVAL, (unless such activities are exempt from the requirement of a DISTRICT APPROVAL pursuant to Ordinance 9 of the DISTRICT).

(DD) The BOARD OF DIRECTORS hereby declares that driving or otherwise operating any MOTOR VEHICLE upon or over any portion of the LEVEE at a speed in excess of ten (10) miles per hour, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(EE) The BOARD OF DIRECTORS hereby declares that the driving or operation of any MOTOR VEHICLE upon or over any RESTRICTED PORTION of the LEVEE, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(FF) The BOARD OF DIRECTORS hereby declares that the parking of a vehicle on the LEVEE in an area designated as a DESIGNATED LEVEE PARKING AREA, in such a manner so as to obstruct or otherwise interfere with a 20-foot wide clear zone on the LEVEE CROWN for vehicles to pass-by, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

(GG) The BOARD OF DIRECTORS hereby declares that the parking of a vehicle on the LEVEE in an area not designated as a DESIGNATED LEVEE PARKING AREA, (except as allowed in the DISTRICT's Ordinance 9), constitutes a public nuisance.

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**Section 20.03.040. What Constitutes a Public Nuisance Regarding Violation of Condition imposed upon District Approval.**

(A) The BOARD OF DIRECTORS hereby declares that any violation of a condition imposed upon the granting of an application for a DISTRICT APPROVAL constitutes a public nuisance if such violation has resulted in something occurring on a PARCEL OF LAND that the condition was intended to prevent.

(B) The BOARD OF DIRECTORS hereby declares that any violation of a condition imposed upon the granting of an application for a DISTRICT APPROVAL constitutes a public nuisance if such violation has failed to result in something occurring on a PARCEL OF LAND that the condition was intended to cause.

**Section 20.03.050. Finding that Enumerated Nuisances Affect Storm Water and Reclamation Service.**

The BOARD OF DIRECTORS hereby finds that each of the public nuisances described above in this Chapter adversely affects the ability of the DISTRICT to supply storm water and reclamation service.

**Section 20.03.060. Enumerated Nuisances Not Exclusive of Others.**

The public nuisances described in this Chapter are not intended to be exclusive of other public nuisances, and situations may arise, different from those described in this Chapter, which will constitute a public nuisance that can be abated by this Ordinance.

**Section 20.03.070. Appointment of District Abatement Officer.**

The BOARD OF DIRECTORS may appoint, from time to time, a DISTRICT ABATEMENT OFFICER, to serve at the pleasure of the BOARD. The District Abatement Officer may be a member of the BOARD OF DIRECTORS or may be an officer of the DISTRICT. In the absence of such an appointment by the BOARD, the DISTRICT MANAGER shall act as the DISTRICT ABATEMENT OFFICER. This Section is enacted pursuant to the authority conferred by Section 93 of the BIMID ACT.



## **CHAPTER 20.04. DECLARATION AND ABATEMENT OF NUISANCES.**

### **Section 20.04.010. Declaration of Nuisance.**

(A) The BOARD OF DIRECTORS shall have the authority to declare a public nuisance under this Ordinance.

(B) The DISTRICT ABATEMENT OFFICER shall have the authority to declare a public nuisance under this Ordinance.

### **Section 20.04.020. Remedies to Abate Nuisance.**

(A) If a nuisance is declared under this Ordinance, there shall be at least two primary methods of abatement: (1) Emergency abatement as provided in this Ordinance; or (2) Abatement after Notice with Appeal Rights as provided in this Ordinance.

(B) The two procedures set forth in subsection (A) of this section are non-exclusive. The DISTRICT may abate any nuisance according to the procedures set forth in this Ordinance or may, in the alternative, abate a nuisance by any other lawful manner or procedure. If the DISTRICT seeks to abate any nuisance by any other lawful manner or procedure, the DISTRICT shall not be precluded from commencing proceedings pursuant to this Ordinance.

**CHAPTER 20.05. EMERGENCY ABATEMENT OF NUISANCES.**

**Section 20.05.010. Emergency Abatement When There is Immediate Threat.**

If the BOARD OF DIRECTORS or DISTRICT ABATEMENT OFFICER determines that the nuisance constitutes an immediate threat to public health and safety the BOARD OF DIRECTORS or DISTRICT ABATEMENT OFFICER may order the immediate summary abatement of the nuisance.

**Section 20.05.020. Examples of “Immediate Threat to Public Health and Safety” as to Ditches.**

As used in this Ordinance, the term "immediate threat to public health and safety" shall include, but is not limited to, the following situations: (i) a DITCH is found to be obstructed, or partially obstructed, which is causing the DITCH to overflow or back-up; or (ii) a drainage ditch is found to be obstructed, or partially obstructed, and water is eroding adjacent soil; or (iii) a drainage ditch is found to be obstructed, or partially obstructed, and a significant amount of rain has been forecasted to fall within a time which will not allow for abatement within the time limits allowed under the "Abatement after Notice with Appeal Rights" procedure of this Ordinance. As used in this section, the term "significant amount of rain" shall mean an amount of rainfall which, in the opinion of the BOARD OF DIRECTORS or DISTRICT ABATEMENT OFFICER, would cause the drainage ditch to overflow, back-up with water, or erode the adjacent soil, if the nuisance were not abated before such rainfall.

**Section 20.05.030. Examples of “Immediate Threat to Public Health and Safety” as to Levee.**

As used in this Ordinance, the term "immediate threat to public health and safety" shall include, but is not limited to, the following situations: (i) a PERSON is digging into the LEVEE, or within the LEVEE SETBACK AREA, (except as allowed in the DISTRICT’s Ordinance 9); and (ii) a PERSON or FIXTURE is blocking travel on the LEVEE CROWN during a “monitor stage” for the water surrounding the ISLAND, as forecast by the Joint Operations Center of the Department of Water Resources and National Weather Service.

**Section 20.05.040. Courtesy Notice.**

If the BOARD OF DIRECTORS, in its discretion, or DISTRICT ABATEMENT OFFICER, in his or her discretion, determines that there is sufficient time to locate the OWNER of the PARCEL OF LAND and allow such PERSON to abate the nuisance, but not enough time to conduct abatement proceedings within the time limits provided for under the "Abatement after Notice with Appeal Rights" procedure of this Ordinance, the BOARD OF DIRECTORS or DISTRICT ABATEMENT OFFICER may serve the OWNER of the PARCEL OF LAND with a courtesy notice to abate the nuisance. The courtesy notice may be oral or in writing, however reasonable attempts shall be made to give such notice in writing. No particular form of courtesy notice is required under this section, however the courtesy notice should be sufficient to apprise the OWNER of the PARCEL OF LAND: (i) that the nuisance exists; (ii) what remedies must be taken by the OWNER of the PARCEL OF LAND to abate the nuisance; (iii) how long the OWNER of the PARCEL OF LAND has before the DISTRICT intends to dispatch equipment to the PARCEL OF LAND for the purpose of abating the nuisance; and (iv) the fact that the OWNER of the PARCEL OF LAND could be billed for the DISTRICT's costs to abatement the nuisance. Failure to give such courtesy notice shall not affect the validity of the summary abatement procedure, nor impair the right of the DISTRICT to seek reimbursement of the DISTRICT's costs to abate the nuisance.

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**Section 20.05.050. Costs of Emergency Abatement.**

In the event a public nuisance is summarily abated on an emergency basis pursuant to Sections 20.05.010, 20.05.020 and 20.05.030 of this Chapter, a written report shall be prepared by, the DISTRICT MANAGER, of the cost of abatement. No particular form of report is required, however the report shall identify the PARCEL OF LAND and the OWNER of the PARCEL OF LAND where the nuisance existed, and shall, to the extent reasonably possible, itemize the categories of costs. The term "cost of abatement" as used in this section shall include any administrative costs incurred by the DISTRICT. Thereafter, a bill for the cost of abatement shall be mailed to the OWNER of the PARCEL OF LAND by both first class mail and certified mail. The bill shall inform the OWNER of the PARCEL OF LAND that failure to pay the bill within thirty (30) calendar days from the date of mailing may result in a lien upon the PARCEL OF LAND. If the bill is not paid within thirty (30) calendar days from the date of mailing to the OWNER of the PARCEL OF LAND, the DISTRICT may proceed to confirm the report and impose a special assessment and lien against the PARCEL OF LAND in accordance with the procedures therefor set forth in this Ordinance, except that, in addition to a review of the costs of abatement, the BOARD OF DIRECTORS shall also hear and determine any issues relative to the necessity for the abatement and/or the manner in which the PARCEL OF LAND was declared to be a public nuisance and summarily abated on an emergency basis.

**CHAPTER 20.06. ABATEMENT AFTER NOTICE  
WITH APPEAL RIGHTS.**

**Section 20.06.010. Notice to Begin Abatement Proceedings.**

Except in situations where the nuisance constitutes an immediate threat to public health and safety, once a public nuisance is declared, the BOARD OF DIRECTORS or DISTRICT ABATEMENT OFFICER shall issue a "Notice and Order to Abate" in substantially the following form:

NOTICE AND ORDER TO ABATE

NOTICE IS HEREBY GIVEN that the real property commonly known as [specify address and/or Assessor Parcel Number] is in violation of Ordinances 4, 9 and/or 20 of the Bethel Island Municipal Improvement District. The violation has been declared a public nuisance by the [specify "Board of Directors of the District" or "District Abatement Officer"] and must be abated immediately.

YOU ARE HEREBY ORDERED TO ABATE SAID PUBLIC NUISANCE within [insert "10" for the number of days, or such larger number for a longer time period that is reasonable under the circumstances] consecutive calendar days from the issuance of this order. The issuance date is specified below. You may abate the nuisance by taking the following action:

[insert acts which would abate the nuisance].

If you fail to abate the public nuisance within the number of days specified above, the District may order its abatement by public employees, private contractor, or other means. The cost of said abatement, if not paid, may be levied and assessed against the property as a special assessment lien and may be collected at the same time and in the same manner as ordinary taxes are collected, subject to the same penalties, procedures and sale in case of delinquency.

YOU MAY APPEAL FROM THIS ORDER TO ABATE, but any such appeal must be brought prior to the expiration of the number of days specified above for completion of abatement. The appeal must be in writing, specify the reasons for the appeal, contain your name, address and telephone number, be accompanied by an appeal fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and be submitted to the Administrative Assistant of the District at the following address:

BIMID Administrative Assistant  
3085 Stone Road  
P.O. Box 244  
Bethel Island, CA 94511

One who is legally indigent may obtain a waiver of the appeal fee.

Upon timely receipt of the appeal and accompanying fee, or the waiver, the ADMINISTRATIVE ASSISTANT will cause the matter to be set for an appeal hearing before the District's Board of Directors and notify you of the date of the appeal hearing. The appeal hearing will take place at the location specified in the notice sent to you.

If you have any questions regarding this matter, you may direct them to the District representative issuing this notice at the address and/or telephone number listed below.

ISSUANCE DATE: \_\_\_\_\_

\_\_\_\_\_  
(Name, title, address and telephone number of the person issuing this notice.)

**Section 20.06.020. Service of Notice and Order to Abate.**

A "Notice and Order to Abate" under this Chapter shall be served in the following manner:

- (a) By both first class mail and certified mail, addressed to the OWNER of the PARCEL OF LAND at the address shown on the last equalized assessment roll or supplemental roll, or as otherwise known to the DISTRICT. Service shall be deemed to have been completed upon the deposit of said "Notice and Order to Abate," postage pre-paid, in the United States mail; and
- (b) By posting, no later than one day of the date of mailing, such "Notice and Order to Abate" conspicuously in front of the PARCEL OF LAND on which, or in front of which, the nuisance exists, or if the PARCEL OF LAND has no frontage, upon the portion of the PARCEL OF LAND nearest to a street, highway, or road, or most likely to give actual notice to the OWNER of the PARCEL OF LAND.

**Section 20.06.030. Appeal of Notice and Order to Abate.**

Any OWNER of the PARCEL OF LAND may appeal, to the BOARD OF DIRECTORS, any matter raised by the "Notice and Order to Abate." Such an appeal shall be filed within the number of days allowed for abatement in the "Notice and Order to Abate." The appeal shall be submitted in writing, specify the grounds upon which the appeal is taken, contain the name, address and telephone number of the appellant, be accompanied by the payment of an appeal fee and be filed with the ADMINISTRATIVE ASSISTANT. Upon the filing of a timely and complete appeal and payment of the appeal fee or submission of an application for a fee waiver as specified in this chapter, further abatement action shall be stayed until the appeal is acted upon.

**Section 20.06.040. Failure to Appeal the Notice and Order to Abate.**

If there is no filing of a timely and complete appeal, enforcement of the "Notice and Order to Abate" may proceed.

**Section 20.06.050. Duties of Administrative Assistant upon receipt of Appeal.**

(A) Within a reasonable time after receiving an appeal under this Chapter, the ADMINISTRATIVE ASSISTANT shall set the matter for an appeal hearing before the BOARD OF DIRECTORS at the next available regular meeting of the BOARD OF DIRECTORS. As used in this section, the term "next available meeting of the BOARD OF DIRECTORS" shall not necessarily mean the next meeting of the BOARD OF DIRECTORS, but instead shall mean the next available meeting, after considering: (i) the number of matters already scheduled to be heard at any particular meeting; (ii) the agenda notice requirements of State law; and (iii) the notice requirements of this Ordinance.

(B) Notwithstanding subdivision (A) of this section, the appeal hearing may be scheduled for a special meeting of the BOARD OF DIRECTORS in accordance with the DISTRICT's procedure for calling special meetings.

(C) The ADMINISTRATIVE ASSISTANT shall notify the appealing party of the date and location of the appeal hearing. Such notification shall be in writing, mailed by both first class mail and certified mail to the appealing party at the address specified in the appeal at least ten days prior to the date of the appeal hearing. Notice shall be deemed to have been given upon the deposit of said notification in the United States mail.

**Section 20.06.060. Appeal fee.**

(A) From time to time the BOARD OF DIRECTORS may set the fees to be collected for processing an appeal under this Chapter. If such fees have been set, the appellant shall pay, and the ADMINISTRATIVE ASSISTANT shall collect, those fees at the time of filing of the appeal under this Chapter. Such fees may be in the form of a deposit against which the DISTRICT's actual costs of processing the appeal under this Chapter will be deducted. If the BOARD OF DIRECTORS should fail to set the amount of the appeal fee, it shall be set at Three Hundred Dollars (\$300).

(B) If the appellant claims to be indigent and cannot pay the appeal fee, he or she may submit an application for waiver of the appeal fee on California Judicial Council Form No. 982(a)(17) entitled "Application for Waiver of Court Fees and Costs" or, if such form is no longer published, then any replacement for such form. The form shall be executed under penalty of perjury and contain a declaration as to the completeness, truthfulness and correctness of the information contained therein. Upon submittal of the completed form, if it appears that the appellant is indigent, the appeal fee shall be waived. In determining whether a PERSON is indigent, the criteria specified in California Judicial Council Form No. 982(a)(A) entitled "Information Sheet on Waiver of Court Fees and Costs," may be relied upon.

(C) Upon filing a timely and complete appeal and for good cause shown, the ADMINISTRATIVE ASSISTANT may grant the appellant a period of time beyond expiration of the appeal period in which to complete and submit the waiver form. In no event shall the additional time exceed three (3) business days.

(D) Failure to submit the fee waiver form or pay the appeal fee in a timely manner shall cause the appeal request to be automatically denied. Enforcement of the order to abate may then proceed as if no appeal request had been submitted.

(E) If the appeal fee is paid and the board finds there is no public nuisance, the appeal fee shall be refunded to the appellant without the payment of any interest which could have accrued.

**Section 20.06.070. Conducting the Appeal Hearing.**

The BOARD OF DIRECTORS shall hold the appeal hearing in accordance with the hearing procedure set forth in this Ordinance.

**Section 20.06.080. Decision.**

At the conclusion of the appeal hearing, the BOARD OF DIRECTORS shall reverse, modify or affirm the matters in the "Notice and Order to Abate." The BOARD OF DIRECTORS may thereupon direct that the DISTRICT proceed and perform the work of abatement if not performed by or on behalf of the OWNER of the PARCEL OF LAND within a prescribed period of time. The decision of the BOARD OF DIRECTORS, including any findings, shall be either: (i) entered into the minutes of the meeting of which the hearing is a part; or (ii) memorialized in a written and signed document separate and apart from any minutes. A copy of the minutes or other document containing the decision shall be mailed, by both first class mail and certified mail, to each party appearing at the appeal hearing, and if no appearance was made by the appellant, to him or her by both first class mail and certified mail, at the address specified in the

appeal. The decision of the BOARD OF DIRECTORS shall be final when mailed by the ADMINISTRATIVE ASSISTANT.

**Section 20.06.090. Time for Compliance After Appeal.**

If, after the appeal hearing, the BOARD OF DIRECTORS decides that the "Notice and Order to Abate" should be enforced, the OWNER of the PARCEL OF LAND shall comply with the order within such period of time as may be prescribed, and in the absence of any prescribed time, within thirty days from the date of mailing of the minutes or other document containing the final decision of the BOARD OF DIRECTORS. The prescribed period of time for compliance shall commence on the date of mailing of the final decision.

**Section 20.06.100. Limitation of Actions.**

Any court action or proceeding to attack, review, set aside, void or annul the decision of the BOARD OF DIRECTORS regarding a "Notice and Order to Abate" shall be commenced within thirty (30) calendar days of mailing of the minutes or other document containing the decision. Thereafter all PERSONS are barred from commencing any such action or proceeding and from asserting any defense of invalidity or unreasonableness of such decision, proceeding, act or determination.

**Section 20.06.110. Failure to Abate.**

Upon the failure, neglect or refusal to properly comply with any "Notice and Order to Abate," or any "Notice and Order to Abate" as modified by the BOARD OF DIRECTORS after the appeal hearing, within the prescribed time period, the DISTRICT may cause to be done whatever work is necessary to abate the public nuisance.

**Section 20.06.120. Collection of Costs.**

(A) When the DISTRICT has completed the work of abatement, or has paid for such work, a written report shall be prepared of the cost of abatement. No particular form of report is required, however the report shall identify the PARCEL OF LAND and the OWNER of the PARCEL OF LAND, and shall, to the extent reasonably possible, itemize the categories of costs. The term "cost of abatement" as used in this section shall include any administrative costs incurred by the DISTRICT.

(B) If there was an appeal of the "Notice and Order to Abate," the cost of abatement shall further include, and the report to be prepared shall also contain, an itemization of the following: (i) the appeal fee, if it had been waived due to the appellant's indigent status; and (ii) reasonable attorneys' fees if the DISTRICT elected to seek recovery of its attorneys' fees at the initiation of the proceedings.

(C) The amounts specified in subdivisions (A) and (B) of this Section shall be included in a bill mailed by both first class mail and certified mail to the OWNER of the PARCEL OF LAND, if not paid prior thereto. The bill shall inform the OWNER of the PARCEL OF LAND that failure to pay the bill within thirty (30) calendar days from the date of mailing may result in a lien upon the PARCEL OF LAND. If the bill is not paid within thirty (30) calendar days from the date of mailing to the OWNER of the PARCEL OF LAND, the DISTRICT may proceed to confirm the report and impose a special assessment and lien against the PARCEL OF LAND in accordance with the procedures therefor set forth in this Ordinance.

(D) The provisions of this section do not apply to the collection of costs of an emergency abatement.

## **CHAPTER 20.07. SPECIAL ASSESSMENT AND LIEN PROCEDURE.**

### **Section 20.07.010. Hearing to Confirm Report and Impose Lien; Notice.**

(A) If the DISTRICT elects to proceed with collecting its costs of abatement by imposing a special assessment and lien against the PARCEL OF LAND involved, a hearing seeking to confirm the cost report and impose the special assessment shall be held by the BOARD OF DIRECTORS.

(B) The ADMINISTRATIVE ASSISTANT shall give written notice of the hearing to confirm the report and impose the special assessment, to the OWNER of the PARCEL OF LAND, in the form prescribed in this Ordinance. Said notice shall be sent to the OWNER of the PARCEL OF LAND by both first class mail and certified mail.

### **Section 20.07.020. Form of Notice of Hearing.**

The notice to be sent to the OWNER of the PARCEL OF LAND, advising of the hearing to confirm the report and impose the special assessment, shall contain the following:

- (a) a description of the PARCEL OF LAND by assessor's parcel number and street number or some other description sufficient to enable identification of the PARCEL OF LAND;
- (b) a statement of the amount of the proposed assessment;
- (c) the time, date and location of the hearing; and
- (d) a statement in substantially the following form: "The property may be sold after three years by the tax collector for unpaid delinquent assessments."

### **Section 20.07.030. Hearing of Objections.**

(A) At the time fixed for the hearing to confirm the report and impose the special assessment, the BOARD OF DIRECTORS shall:

- (a) Receive the report containing the costs of abatement, prepared pursuant to subsection (A) of Section 20.06.120;
- (b) If the report was prepared as the result of an emergency abatement, hear and determine any issues relative to the necessity for the abatement and/or the manner in which the PARCEL OF LAND was declared to be a public nuisance; and
- (c) Hear and determine any objections to the report, including the amount of the proposed assessment for the work of abatement.

(B) If the report was prepared as the result of an emergency abatement, and the BOARD OF DIRECTORS determines that there was no necessity for the abatement, no special assessment shall be imposed on the PARCEL OF LAND. If the report was prepared as the result of an emergency abatement, and the BOARD OF DIRECTORS determines that there was no public nuisance existing at the time of the abatement, no special assessment shall be imposed on the PARCEL OF LAND.

(C) At the conclusion of the hearing, the BOARD OF DIRECTORS may confirm the report without change, modify the report and confirm it as modified, or reject the report. If the report is rejected, no special assessment shall be imposed on the PARCEL OF LAND.



(D) The BOARD OF DIRECTORS may add to the proposed assessment an amount equal to the cost of conducting the hearing to confirm the report and impose the special assessment.

(E) If the report is confirmed, or the report is confirmed as modified, the costs mentioned in the report or report as modified, shall constitute a special assessment against the PARCEL OF LAND and are a lien on the PARCEL OF LAND for the amount of the assessment. Thereafter, the DISTRICT shall record a Notice of Special Assessment as specified in this Ordinance. In addition to being a special assessment against the PARCEL OF LAND upon which the nuisance was maintained, the lien shall be a personal obligation of the OWNER of the PARCEL OF LAND or other PERSON maintaining the nuisance.

(F) The decision of the BOARD OF DIRECTORS regarding the report, including any findings, shall be either: (i) entered into the minutes of the meeting of which the hearing is a part; or (ii) memorialized in a written and signed document separate and apart from any minutes. A copy of the minutes or other document containing the decision shall be mailed, by both first class mail and certified mail, to each party appearing at the hearing, and if no appearance was made by the OWNER of the PARCEL OF LAND, to him or her by both first class mail and certified mail, at his or her last known address or as specified in any filed appeal.

(G) The decision of the BOARD OF DIRECTORS regarding the report shall be final and conclusive when mailed by the ADMINISTRATIVE ASSISTANT.

**Section 20.07.040. Limitation of Actions.**

Any court action or proceeding to attack, review, set aside, void or annul the BOARD OF DIRECTORS's decision after the hearing to confirm the report and impose the special assessment shall be commenced within thirty calendar days of mailing of the minutes or other document containing the decision. Thereafter all persons are barred from commencing any such action or proceeding and from asserting any defense of invalidity or unreasonableness of such decision, proceeding, act or determination.

**Section 20.07.050. Notice of Special Assessment and Abatement Lien.**

Any Notice of Special Assessment recorded under this Ordinance shall be substantially in the following form:

NOTICE OF ASSESSMENT AND ABATEMENT LIEN  
(Public Nuisance Abatement)

This Notice is given by the Bethel Island Municipal Improvement District,  
(herein sometimes referred to as the District).

Pursuant to Government Code Section 38773.5, Section 96 of Chapter 22 of the Statutes of 1960, First Extraordinary Session, as modified by Section 24 of Chapter 789 of the Statutes of 1989, and the District's Ordinances, the District abated a public nuisance on the parcel of real property described below, of which the below-shown named person(s) is/are the owner(s) of record, and fixed the below-shown amount as the cost thereof and thereby claims a special assessment against said property for that amount. In addition to claiming a special assessment against said parcel of real property, the District claims such lien to be a personal obligation of the property owner(s) specified below.

1. The name(s) and last known address(es) of the owners of record of the property are:

[Insert names and addresses]

2. A report of the Abatement was confirmed by the Board of Directors of the District on: [Insert Date]

3. The parcel of real property upon which the special assessment is claimed is described as:

Assessor's Parcel #: [Insert Number]  
Other description: [Insert Legal Description or refer to Exhibit]

6. The amount of the special assessment is: \$ [Insert Amount]

Dated: \_\_\_\_\_

Bethel Island Municipal Improvement District

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Board Secretary

**Section 20.07.050. Auditor to Receive Copy of Recorded Notice.**

After recording any Notice of Special Assessment pursuant to this Ordinance, the DISTRICT shall deliver a copy of such notice to the Contra Costa County Auditor.

**Section 20.07.060. Collection with Property Taxes; Exception.**

(A) After recording a Notice of Special Assessment pursuant to this Ordinance, and delivery of a copy to the County Auditor, the amounts of the special assessment shall be collected at the same time and in the same manner as county taxes are collected, and are subject to the same penalties and the same procedure and sale in case of delinquency as provided for ordinary county taxes. All laws applicable to the levy, collection and enforcement of county taxes are applicable to such assessments.

(B) Notwithstanding subdivision (A) of this Section, if any PARCEL OF LAND to which the special assessment lien would attach has been transferred or conveyed to a bona fide purchaser for value, or a lien of a bona fide encumbrancer for value has been created and attaches thereon prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed shall not attach to such PARCEL OF LAND and the cost of abatement and the cost of enforcing the abatement as confirmed, relating to such PARCEL OF LAND, shall be transferred to the unsecured roll for collection.

**Section 20.07.070. Release and Subordination.**

A special assessment lien created under this Chapter may be released or subordinated by the DISTRICT in the same manner as a judgment lien on real property may be released or subordinated.

## **CHAPTER 20.08. HEARINGS UNDER THIS ORDINANCE.**

### **Section 20.08.010. Hearing Location.**

All hearings conducted by the BOARD OF DIRECTORS under this Ordinance shall be conducted at a location within the DISTRICT. Unless a different location within the DISTRICT is specified by the ADMINISTRATIVE ASSISTANT, the DISTRICT's office shall be the location of any hearing conducted under this Ordinance.

### **Section 20.08.020. Hearing Procedure.**

Any hearing before the BOARD OF DIRECTORS under this Ordinance shall be conducted in accordance with the following procedures:

- (a) The appellant or OWNER of the PARCEL OF LAND shall have these rights: (i) to be represented by legal counsel; (ii) to call and examine witnesses; (iii) to introduce exhibits; and (iv) to cross-examine opposing witnesses on any matter relevant to the issues. If the appellant or OWNER of the PARCEL OF LAND does not testify on his or her own behalf, he or she may be called and examined as if under cross-examination.
- (b) The BOARD OF DIRECTORS may impose reasonable time limits upon direct and cross-examination of each witness, however any time limit shall not be less than one-half hour. Any time limit imposed upon direct examination shall be the same as any time limit imposed upon cross-examination and vice-versa.
- (c) The hearing need not be conducted according to the technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence may be excluded.
- (d) The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who does not proficiently speak the English language shall provide an interpreter, approved by the BOARD OF DIRECTORS as proficient in the English language and the language in which the witness will testify, to serve as interpreter during the hearing. The cost of the interpreter shall be paid by the party providing the interpreter.
- (e) A party may have the hearing stenographically reported at said party's expense. Oral evidence may be taken under oath if requested by a party.
- (f) The hearing may be continued from time to time upon request of a party to the hearing and upon a showing of good cause therefor.
- (g) The hearing shall be open to the public.
- (h) To the extent they are not in conflict with the procedures and rights set forth above in this Section, the DISTRICT's rules and procedures for the conduct of meetings in general shall apply to the hearing.

## CHAPTER 20.09. STOP WORK ORDERS.

### Section 20.09.010. Issuance of Stop Work Orders.

- (A) The BOARD OF DIRECTORS and the DISTRICT ABATEMENT OFFICER shall each have the authority to issue a “Stop Work Order” for any activity that appears to be, or will lead to, an immediate threat to public health and safety.
- (B) The BOARD OF DIRECTORS and the DISTRICT ABATEMENT OFFICER shall each have the authority to issue a “Stop Work Order” for any activity declared to be a public nuisance under this Ordinance.
- (C) The BOARD OF DIRECTORS and the DISTRICT ABATEMENT OFFICER shall each have the authority to issue a “Stop Work Order” for any activity that violates Ordinance 9 and/or Ordinance 4 of the DISTRICT.
- (D) The BOARD OF DIRECTORS and the DISTRICT ABATEMENT OFFICER shall each have the authority to issue a “Stop Work Order” for any activity in violation of a condition imposed upon the granting of an application for a DISTRICT APPROVAL under any Ordinance of the DISTRICT.

### Section 20.09.020. Form of Stop Work Order.

- (A) The BOARD OF DIRECTORS hereby approves the following form of a Stop Work Order:

# STOP WORK ORDER

## ---NOTICE---

LOCATION: [Here insert address or other description of property.]

The Board of Directors / District Abatement Officer of the Bethel Island Municipal Improvement District hereby orders the stop of all [insert description, such as “construction” or “grading”] located on, or in the following area of, the above described property: [here insert description of structure or location on property, such as “within the drainage ditch crossing the property” or “on the slope of the levee” or “on the house being built”] (herein referred to as the “activity”).

Persons performing work on the structure, or in the area, described above are in violation of Chapter 20.09 of Ordinance 20 of the Bethel Island Municipal Improvement District. You must receive written approval from the District prior to continuance of the above activity.

Persons failing to comply with this Order may be subject to criminal and civil penalties as provided for in Ordinances 4, 9 and/or 20 of the Bethel Island Municipal Improvement District.

YOU MAY APPEAL FROM THIS STOP WORK ORDER, but any such appeal must be brought within ten (10) days after issuance of this Order. The appeal must be in writing, specify the reasons for the appeal, contain your name, address

and telephone number, be accompanied by an appeal fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and be submitted to the Administrative Assistant of the District at the following address:

BIMID Administrative Assistant  
3085 Stone Road  
P.O. Box 244  
Bethel Island, CA 94511

One who is legally indigent may obtain a waiver of the appeal fee.

Upon timely receipt of the appeal and accompanying fee, or the waiver, the Administrative Assistant will cause the matter to be set for an appeal hearing before the District's Board of Directors and notify you of the date of the appeal hearing. The appeal hearing will take place at the location specified in the notice sent to you.

If you have any questions regarding this matter, you may direct them to the District representative issuing this notice at the address and/or telephone number listed below.

DATE POSTED: \_\_\_\_\_

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(Name, title, address and telephone number of the person issuing this notice.)

**REMOVAL OF THIS NOTICE IS UNLAWFUL**

(B) The minimum size of a Stop Work Order shall be Eight and one-half inches (8-1/2" wide by eleven inches (11") high.

(C) The form of Stop Work Order approved in subsection (A) need not be used, provided the form actually used complies with any state law governing such orders.

**Section 20.09.030. Service and Posting of Stop Work Order.**

(A) A "Stop Work Order" shall be posted in a conspicuous place on the PARCEL OF LAND where the activity, which is the subject of such order, is taking place.

(B) A "Stop Work Order" issued under this Chapter shall be served upon all PERSONS who appear to be engaged in the activity which is the subject of the order, at the time of the posting described in subsection (A) of this Section. In lieu of serving every such PERSON who appears to be engaged in the activity, it shall be sufficient to serve a PERSON who appears to be in charge of such work.

**Section 20.09.040. Copy to be Retained by District.**

(A) The PERSON issuing a "Stop Work Order" under this Chapter shall promptly provide a true and correct copy to the ADMINISTRATIVE ASSISTANT, who shall retain a copy in the DISTRICT's records.

(B) From time to time the BOARD OF DIRECTORS may authorize the destruction of copies of "Stop Work Orders," provided at least three (3) years has elapsed since they were issued.

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**Section 20.09.050. Work Shall Cease After Service of Stop Work Order.**

After the service and posting of a “Stop Work Order” under this Chapter, it shall be a violation of this Ordinance for any PERSON to continue the activity which is the subject of the order, until such time as a written authorization to resume such activity is issued by the DISTRICT.

**Section 20.09.060. Prohibition Against Removal of Posted Stop Work Order.**

(A) After the posting of a “Stop Work Order” under this Chapter, it shall be a violation of this Ordinance for any PERSON to remove such Order from the premises where it was posted, unless a written authorization to resume such activity has been issued by the DISTRICT.

(B) Notwithstanding subsection (A) of this Section, a “Stop Work Order” may be removed from such premises by the BOARD OF DIRECTORS or the DISTRICT ABATEMENT OFFICER for any reason, including if the order was mistakenly issued.

**Section 20.09.060. Appeal of Stop Work Order.**

Any PERSON affected by a “Stop Work Order” issued pursuant to this Chapter shall have the right to appeal such order within ten (10) days after it was issued, in the same manner, as a “Notice and Order to Abate” can be appealed under Chapter 20.06.



**POSTING AND EFFECTIVE DATE.**

After adoption by the Board, copies of this Ordinance, as amended, shall be posted in three separate places within the DISTRICT for one week. The BOARD SECRETARY or the ADMINISTRATIVE ASSISTANT shall post such copies in the manner specified. This ordinance, as amended, shall become effective upon the expiration of said one week period.

\* \* \*

Adopted by the Board of Directors of the Bethel Island Municipal Improvement District at a special meeting on October 30, 2006, by the following vote:

AYES: Directors Phippen, Lawry, Cameron, Gearhart and Goodson.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

/s/ Dan Phippen  
Dan Phippen, President of the Board

ATTEST:

/s/ Marguerite Lawry  
Marguerite Lawry, Board Secretary

\* \* \*



**AFFIDAVIT OF POSTING ORDINANCE  
AFTER ADOPTION BY BOARD OF DIRECTORS**

I, the undersigned, hereby declare, under penalty of perjury under the laws of the State of California, that the following is true and correct:

(A) I am the Board Secretary of the Bethel Island Municipal Improvement District.

(B) On October 30, 2006, I posted copies of the attached Ordinance 20, as amended, of the Bethel Island Municipal Improvement District, in three separate places within the District, as follows:

- (1) Bulletin Board outside BIMID Hall, 3085 Stone Road, Bethel Island CA .
- (2) Light pole in park at corner of Bethel Island Road and Ranch Lane, Bethel Island, CA
- (3) Bethel Island Post Office, Bethel Island Road, Bethel Island, CA.

Dated: October 30, 2006.

/s/ Marguerite Lawry  
Marguerite Lawry, Board Secretary